REMARKS

Applicants have considered the June 5, 2006 Office Action, and the amendments above together with the comments that follow are presented in a bona fide effort to address all issues raised in that Action and thereby place this case in condition for allowance. Claims 1-36 were pending in this application. In response to the Office Action dated June 6, 2006, claims 1-35 have been canceled, claim 36 has been amended, and new method claims 37-68 have been added. Care has been exercised to avoid the introduction of new matter. Adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure, including originally filed claims 2-30 and 32-34. Applicants submit that the present Amendment does not generate any new matter issue. Entry of the present Amendment is respectfully solicited. It is believed that this response places this case in condition for allowance. Hence, prompt favorable reconsideration of this case is solicited.

Initially, Applicants respectfully request consideration of the Information Disclosure Statement previously submitted on August 16, 2006. The Examiner is requested to forward Applicants an appropriately initialed copy of the PTO-1449 form with the next Office communication.

Claims 31 and 32 were rejected under 35 U.S.C. § 112, second paragraph. Applicants respectfully traverse. Claims 31-32 have been canceled and, therefore, the rejection is moot. Applicants further submit that new claims 37-68 are in compliance with the requirements of the second paragraph of 35 U.S.C. § 112. One having ordinary skill in the art would not have difficulty understanding the scope of the presently claimed invention, particularly when reasonably interpreted in light of the supporting specification.

Claims 1-4, 9-18, 35 and 36 were rejected under 35 U.S.C. § 102(b) as being anticipated over JP 2001-307758 (hereinafter the "'758 application"). Claims 1-4, 9-18 and 35 have been canceled and, therefore, the rejection is moot with respect to these claims. Applicants respectfully traverse with respect to independent method claim 36.

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the possession of one having ordinary skill in the art. *Helifix Ltd. v. Blok-Lok, Ltd.*, 208 F.3d 1339, 54 USPQ2d 1299 (Fed. Cir. 2000); *Electro Medical Systems S.A. v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 32 USPQ2d 1017 (Fed. Cir. 1994). Moreover, in imposing the rejection under 35 U.S.C. § 102, the Examiner is required to specifically identify wherein an applied reference is perceived to identically disclose each feature of a claimed invention. *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984). That burden has not been discharged. Moreover, there are significant differences between the claimed subject matter and the method disclosed by the '758 application that would preclude the factual determination that the '758 application identically describes the claimed invention within the meaning of 35 U.S.C. § 102.

Independent claim 36 describes a control method for a fuel cell power plant system for a moving body. The system includes a drive device which drives the moving body by receiving power. A power plant is provided and has a fuel cell which supplies power to the drive device. The power plant is also provided with a fuel supply device which supplies fuel required for the fuel cell to generate power to the fuel cell. The method includes the requirement that when the moving body has stopped, one operating mode from a plurality of operating modes is selected

according to a running state of the power plant. The fuel cell does not generate power to be supplied to the drive device in the plurality of operating modes. The method further includes the step of controlling the power plant based on the selected operating mode.

Thus, claim 36 recites, in pertinent part, that when the moving body has stopped, one operating mode is selected from a plurality of operating modes according to a running state of the power plant. Moreover, in the plurality of operating modes, the fuel cell does not generate power to be supplied to the drive device. Applicants submit that the '758 application fails to disclose or remotely suggest a plurality of operating modes as presently claimed. The Examiner's rejection on pages 3-5 of the Office action fails to particularly point out where the '758 application discloses or suggest this limitation recited in method claim 36. It is legally erroneous to ignore any claim limitation. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988). Moreover, the only motivation for such a limitation is Applicants' own disclosure. Applicants' disclosure, however, is forbidden territory for the Examiner to obtain the requisite motivation for combining the applied prior art. *Panduit Corp. v. Dennison Mfg. Co.*, 774 F.2d 1082, 227 USPQ 337 (Fed. Cir. 1985).

The above argued differences between the claimed method and the '758 application undermines the factual determination that the '758 application discloses the method identically corresponding to that claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 U.S.P.Q. 86 (Fed. Cir. 1986). Applicants, therefore, submit that the imposed rejection under 35 U.S.C. § 102 for lack of novelty as evidenced by the '758 application is not factually viable and, hence, solicit withdrawal thereof.

Claims 5, 7 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the '758 application in view of Miyazawa et al. (U.S. Pat. App. No. 2004/0081870, hereinafter "Miyazawa"). Applicants respectfully traverse. Claims 5, 7 and 8 have been canceled and, therefore, the rejection is moot.

Claims 5-8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the '758 application in view of Kunitake et al. (U.S. Pat. App. No. 2002/0046889, hereinafter "Kunitake"). Applicants respectfully traverse. Claims 5-8 have been canceled and, therefore, the rejection is moot.

Claims 19-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the '758 application in view of either Rieker et al. (U.S. Pat. No. 6,339,749, hereinafter "Rieker") or Yoshida et al. (U.S. Pat. No. 6,173,226, hereinafter "Yoshida"). Applicants respectfully traverse. Claims 19-23 have been canceled and, therefore, the rejection is moot.

Claims 24 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the '758 application in view of Kawai et al. (U.S. Pat. No. 6,577,334, hereinafter "Kawai"). Applicants respectfully traverse. Claims 24 and 25 have been canceled and, therefore, the rejection is moot.

Claims 26-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the '758 application in view of Lee (U.S. Pat. No. 6,847,127, hereinafter "Lee"). Applicants respectfully traverse. Claims 26-30 have been canceled and, therefore, the rejection is moot.

Claims 31 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the '758 application in view of either JP 2000-329576 ("'576 patent") or Morisawa (U.S. Pat. No. 5,983,154, hereinafter "Morisawa"). Applicants respectfully traverse. Claims 31 and 32 have been canceled and, therefore, the rejection is moot.

Claims 33 and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the '758 application in view of either Yashiki et al. (U.S. Pat. No. 6,480,928, hereinafter "Yashiki") or Matsuura et al. (U.S. Pat. No. 6,876,892, hereinafter "Matsuura"). Applicants respectfully traverse. Claims 33 and 34 have been canceled and, therefore, the rejection is moot.

Applicants incorporate herein the arguments previously advanced in traversal of the rejection of claim 36 under 35 U.S.C. § 102(b) predicated upon the '758 application. The remaining secondary references do not cure the argued deficiencies of the '758 application. Applicants submit that new dependent method claims 37-68 are free from the art of record in view of their dependency from independent method claim 36. If any independent claim is non-obvious under 35 U.S.C. § 103(a), then any claim depending therefrom is non-obvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

It is believed that all pending claims are now in condition for allowance. Applicants therefore respectfully request an early and favorable reconsideration and allowance of this application. If there are any outstanding issues which might be resolved by an interview or an Examiner's amendment, the Examiner is invited to call Applicants' representative at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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